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# Remembering Professor Ronald Rotunda

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# Remembering Professor Ronald Rotunda

*Josh Blackman\**

In 2006, I walked into law school absolutely clueless.<sup>1</sup> I had never taken a class in constitutional law and could not tell you what the acronym “SCOTUS” meant. That cluelessness changed when I entered Professor Ronald Rotunda’s *Constitutional Law I* classroom. I was immediately hooked. Ron, as I would come to know him, was able to seamlessly blend probing questions, compelling lectures, and uproarious humor. One of my favorite Rotunda jokes concerned the Mann Act: “A zookeeper fed his long-lived dolphins sea gulls, which was the secret to their longevity. One night he was carrying the gulls, but he had to jump over a sleeping lion, and so he was arrested for transporting gulls across staid lions for immoral porpoises.” Even his one-paragraph syllabus was comical:

For the first day of class, please read the U.S. Constitution (pp. lv-lxxix), in Rotunda, MODERN CONSTITUTIONAL LAW (Thomson West, 8th ed. 2007). Then, we will read Chapters 1 & 2. Then we will read § 5-1 of Chapter 5. After that, we will read Chapters 3 & 4. Then, we will read Chapter 6, §§ 6-1 & 6-2. All pages include the associated pages in the 2007 Supplement. Finally, we will return to Chapter 5 and decide what parts of that chapter we will read next. For each class, please read about 30 pages beyond where we finished in the previous class. If you do that, you will often be ahead of the class but never behind.<sup>2</sup>

A few weeks into the semester, I invited Ron to participate in a Federalist Society debate on the Ninth Amendment with the Cato Institute’s Roger Pilon. Ron replied that he may not be the right person to participate. “I suppose you want someone who has a view of the [Ninth] Amendment more restrictive than Roger’s [. . .] I’m not

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\* Associate Professor, South Texas College of Law Houston. This memorial for the *Chapman Law Review* is based on my lengthy email correspondence with Professor Rotunda, as well as my best recollections of our personal interactions. I delivered a version of this memorial at Chapman University Dale E. Fowler School of Law on January 25, 2019. Josh Blackman, *Chapman Law Review Symposium on Ronald Rotunda*, YOUTUBE (Jan. 25, 2019), <https://www.youtube.com/watch?v=Ebc-iZyHDJw&t=1160s>.

<sup>1</sup> Josh Blackman, *From Being One L to Teaching One L*, in BEYOND ONE L: STORIES ABOUT FINDING MEANING AND MAKING A DIFFERENCE IN LAW (Nancy Levit & Allen Rostron eds., 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2118335](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2118335) [http://perma.cc/G5NH-DV8X].

<sup>2</sup> Syllabus, *Constitutional Law I*, Ronald D. Rotunda (on file with author).

sure,” he wrote.<sup>3</sup> Eventually, Professor Nelson Lund indicated he would be willing to debate Roger. Ron agreed to moderate. “I’m a very moderate person,” he added. When we tried to figure out the timing, Ron joked, “My guess is that the students like to ask questions rather than watching us talking heads.”

The debate was a great success. It was the first event that I organized as a student, and it inspired my ongoing involvement with the Federalist Society. Eventually, I became fortunate to count Nelson and Roger, along with Ron, as friends and colleagues.

While I was a student, Ron and I would email quite frequently about the most arcane issues of constitutional law. And—unlike many law professors—he would always respond with clarity and care. Ron was always willing to engage with any questions I posed. At one point, Bill Clinton suggested he could run as Hillary Clinton’s Vice President. I asked Ron if that act was constitutional under the Twenty-second Amendment. Ron replied with his usual wit: “I don’t think answering legal questions is Bill’s forte.” He added, “[Bill] and Hillary are from the same state and the President and Vice President cannot be from the same state, amendment 12.”

In another email, I inquired about then-candidate Rudy Giuliani’s proposal to “brib[e] the states with money and power.” Ron replied, “Giving money to the states is ok if there are not strings. Sadly, there are always strings.”

Later in the semester, I asked him whether the Virginia GOP could require voters to sign a loyalty oath.<sup>4</sup> This plan was designed to prevent Democrats from interceding in Virginia’s open-primary. He quickly wrote back and pointed me to the *Oaths Cases* in the textbook.<sup>5</sup> Ron explained that “there is a real free speech problem.” A few days later, Ron emailed me again to note that the GOP dropped the pledge. He thought that much of his students: Unprovoked, he sent me items that would interest me.

Later in the semester, I missed a class in which Ron answered some question I asked earlier in the semester. Even years later, Ron would still carp that I missed the class where he answered my question. His memory was remarkable.

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<sup>3</sup> Throughout this Article, I reproduce some of my e-mail correspondences with Ron Rotunda.

<sup>4</sup> *Virginia Briefing*, WASH. POST (Nov. 28, 2007), [http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112702235\\_3.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/11/27/AR2007112702235_3.html) [<http://perma.cc/48K3-JA5M>].

<sup>5</sup> See, e.g., *Elfbrandt v. Russell*, 384 U.S. 11 (1966).

After our *Constitutional Law I* class, Ron remained a strong presence in my life. During my 2L year, I asked him if he had some time to chat about clerkships at a certain time. He replied that my preferred day wouldn't work: "I will have a small private lunch with the President! I'm excited. It will be at a Georgetown restaurant." In a follow-up email, he wrote:

Speaking of the President, our lunch was great. Bush was in great form. He spoke, impromptu, for over an hour. We were about 6 feet from him the whole time. He told me that I have to obey Kyndra [Ron's wife] because she is a Major and outranks me. I told him that I already knew that.

Another time he apologized for being unable to attend an event at George Mason: "Tomorrow, I get two wisdom teeth extracted, so the next time we chat, I'll have less wisdom."

Occasionally, we even talked about law! After *Boumediene v. Bush* was decided,<sup>6</sup> Ron quipped, "As for bin Laden, I think he would get habeas after this decision, although the case has a lot of fudge words in it (e.g., Justice Kennedy complained that people were detained for an 'undue' amount of time, with no definition of what amount of time is due)." Shortly before *District of Columbia v. Heller* was decided,<sup>7</sup> Ron predicted "Scalia will write the majority." Hours after it was decided, Ron wrote back "I'm trying to edit the case now to put it in the casebook. It is too long. But, there is a lot of discussion of how to interpret. I'm editing Stevens now."

Even after Ron left George Mason for the Chapman University, Dale E. Fowler School of Law, we kept in touch. During my 3L year, when I attended a clerkship workshop at nearby-Pepperdine University, Ron and Kyndra picked me up in a snazzy Mercedes coupe. They graciously took me out to dinner. (In an earlier email, Ron joked that he had some car trouble: "There was a loose flux capacitor or something like that. They put in a new one.")

After I started teaching, Ron and I grew closer. I sent him copies of my articles, and he always sent back pithy comments. Most recently, I thanked him in the dagger note of my essay on ABA Model Rule 8.4(g).<sup>8</sup>

Ron not only affected my scholarship, but also made a significant impact on my teaching. Many of the specific points I make in class come directly from Ron. For example, he would

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<sup>6</sup> 553 U.S. 723, 795 (2008).

<sup>7</sup> 554 U.S. 570 (2008).

<sup>8</sup> See Josh Blackman, *Reply: A Pause for State Courts Considering Model Rule 8.4(g): The First Amendment and "Conduct Related to the Practice of Law,"* 30 GEO. J. LEGAL ETHICS 241, 241 n.\* (2017).

always complain that most *Constitutional Law* casebooks excluded Justice Blackmun's citation to *Buck v. Bell* in the excerpt of *Roe v. Wade*.<sup>9</sup> He wrote in an email, "they excise it from the opinion. I guess they wanted Blackmun and the Court to look better than they really are. That is what acolytes do." (Ron had a fascinating exchange with Justice Blackmun about *Roe*.<sup>10</sup>) When I became an editor of *Cases in Context* with Professor Randy Barnett, I ensured that our casebook included that citation.<sup>11</sup>

Ron would always send me copies of his latest writings. "Hot off the presses!" the subject line would usually say. His writings were always punchy. In a 2015 email about *Masterpiece Cakeshop*,<sup>12</sup> Ron offered a definition of the word "liberal": "someone who doesn't care what you do as long as it's compulsory."<sup>13</sup>

In 2016, I spoke at the Florida International University (FIU) Law Review Symposium on the Separation of Powers.<sup>14</sup> It was my honor to be on the same program as both of my *Constitutional Law I & II* professors: Ron and David Bernstein.<sup>15</sup> I remarked to both of them that much of what I teach came directly from their class. I was very fortunate to have such amazing professors at George Mason. I wouldn't be the professor I am today without having learned from them.

Though Ron is gone, his memory will live on in the hearts and minds of his students, his colleagues, and the rule of law, which he cared so deeply about.

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<sup>9</sup> *Roe v. Wade*, 410 U.S. 113, 154 (1973) ("The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some *amici* that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past." (citing *Buck v. Bell*, 274 U.S. 200 (1927))).

<sup>10</sup> Josh Blackman, *Rotunda Has Justice Blackmun's Off-the-Record Comments About Roe v. Wade*, JOSH BLACKMAN'S BLOG (Jan. 22, 2014), <http://joshblackman.com/blog/2014/01/22/rotunda-has-justice-blackmun-off-the-record-comments-about-roe-v-wade/>.

<sup>11</sup> CONSTITUTIONAL LAW: CASES IN CONTEXT 1177 (Randy E. Barnett & Josh Blackman eds., 3rd ed. 2017).

<sup>12</sup> *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

<sup>13</sup> Ronald D. Rotunda, *Marriage Litigation in the Wake of Obergefell v. Hodges*, VERDICT (Sept. 28, 2015), <https://verdict.justia.com/2015/09/28/marriage-litigation-in-the-wake-of-obergefell-v-hodges> [<http://perma.cc/LB9H-73DS>].

<sup>14</sup> Josh Blackman, "Government by Blog Post" FIU Law Review Symposium on Separation of Powers, JOSH BLACKMAN'S BLOG (Aug. 2, 2016), <http://joshblackman.com/blog/2016/08/02/government-by-blog-post-fiu-law-review-symposium-on-separation-of-powers>.

<sup>15</sup> Josh Blackman, *Remembering Professor Rotunda*, JOSH BLACKMAN'S BLOG (Mar. 18, 2018), <http://joshblackman.com/blog/2018/03/18/remembering-professor-ronald-rotunda/>.